

The Honorable Mary Jo Heston
Chapter 13
Hearing Location: Telephonic
Hearing Date: April 30, 2020
Hearing Time: 1:00 p.m.
Response Date: April 23, 2020

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re:

Patrick Bernard Roberts
Chandelle Catherine Roberts aka Chandelle
Catherine Osborne

Debtors

Case No.: 19-42678-MJH

Chapter 13

MOTION FOR RELIEF FROM STAY AND
MEMORANDUM IN SUPPORT THEREOF

COMES NOW, Guild Mortgage Company (“Creditor”) and moves the Court pursuant to 11 USC §362(d) for an Order Terminating the Automatic Stay, allowing Creditor to proceed with any and all contractual and statutory remedies incident to the interest held by virtue of the note and deed of trust described below and attached as exhibits to this motion and memorandum.

I. RELEVANT FACTS

A. The Property

On or about June 5, 2017, Patrick Roberts and Chandelle Roberts executed a note in favor of Guild Mortgage Company in the original principal amount of \$397,664.00 (“Note”). The debt described by the Note is secured by a deed of trust (“Deed of Trust”) properly recorded and creating a lien against property commonly described as 34907 38th Avenue Ct E, Eatonville, WA 98328 (the “Property”).

1 Creditor is the holder of the Note and thus has standing to enforce the Note pursuant to
2 RCW §62A.3-301. The Deed of Trust was pledged as incident to the Note and thus, as the
3 holder of the Note, Creditor also has the right to enforce the Deed of Trust that follows the note.
4

5 Subsequent to the execution of the Note and Deed of Trust, Debtors have filed for
6 protection under Chapter 13 of Title 11 of the United States Code.

7 Upon information and belief, no foreclosure sale is pending as of the date of this motion.
8

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10 **B. The Debt**

11 As of March 31, 2020, Debtor is due for the February 1, 2020 payment. The approximate
12 amount owed under the terms of the Note is \$380,529.04. This is an approximation of the lien,
13 including principal balance plus accrued interest, late charges, escrow shortages and other fees
14 and costs, as allowed under the terms of the Deed of Trust. This estimate is accurate as of the
15 date provided to counsel for the Creditor and is intended only for the purposes of this motion.
16 This amount cannot be relied upon for any other purposes, including payoff of the secured debt.
17 A complete, date specific and itemized payoff figure may be obtained from Movant upon written
18 request to counsel for Creditor.
19
20
21

22 **C. The Value of the Property**

23 The value of the Property as represented in Debtor's sworn schedules is \$450,000.00.
24

25 **D. The Post-Petition Default**

26 Debtors have defaulted post-petition for payments due on and after February 1, 2020. As
27 of the date of this motion, the total post-petition default is itemized as follows:
28
29

2/01/2020 – 4/01/2020	\$2,570.14	\$7,710.42
Less suspense		(\$129.86)
Total Due:		\$7,580.56

II. ARGUMENT AND AUTHORITY

A. Standing

To prosecute a motion for relief from the automatic stay as to enforcement of a note and deed, a movant must establish that it has an interest in the note, either as a holder, or as a party entitled to enforce the note. See *In re Veal*, 450 B.R. 897 (9th Cir. BAP 2011). In the case at bar, the declaration and exhibits supporting the motion establish that Creditor is the holder of the Note and thus has standing to prosecute the present motion.

B. Basis for Relief from Stay

Under 11 U.S.C. 362 (d)(1), the court shall grant relief from the stay for cause. Significant default under the terms of a Chapter 13 plan is cause sufficient to terminate the automatic stay. *In re Ellis*, 60 B.R. 432 (9th Cir. BAP 1985). In the case at bar, Debtor has failed to perform as promised under the terms of the Chapter 13 plan and thus there is cause to terminate the stay.

III. RELIEF REQUESTED

For the reasons stated above, Creditor requests:

1. An Order Terminating the Automatic Stay.
2. Alternatively, for an Order requiring adequate protection of Movant's interest in the Property.

1 3. For such other relief as the Court deems proper.

2
3 Dated: April 8, 2020

McCarthy & Holthus, LLP

4 /s/ Lance E. Olsen

5 Lance E. Olsen, Esq. WSBA #25130

6 Michael S. Scott, Esq. WSBA #28501

7 Attorney for Movant

1
2 **CERTIFICATE OF SERVICE**

3 On 4/8/2020, I served the foregoing **NOTICE OF MOTION FOR RELIEF FROM THE**
4 **AUTOMATIC STAY; MOTION FOR RELIEF FROM AUTOMATIC STAY; DECLARATION IN**
5 **SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY AND ALL EXHIBITS SUPORTING**
6 **THE MOTION AND DECLARATION** on the following individuals by electronic means through the Court's ECF
7 program:

8
9
10 **TRUSTEE**

11 Michael G. Malaier

12 ecfcomputer@chapter13tacoma.org

13 **DEBTORS' COUNSEL**

14 Brett L Wittner

15 BLWittner@bvmm.com

16
17
18 **I declare under penalty of perjury under the laws of the United States of America that the foregoing**
19 **is true and correct.**

20 /s/ Andrei Mihai

21 Andrei Mihai

22
23 On 4/8/2020, I served the foregoing **NOTICE OF MOTION FOR RELIEF FROM THE**
24 **AUTOMATIC STAY; MOTION FOR RELIEF FROM AUTOMATIC STAY; DECLARATION IN**
25 **SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY AND ALL EXHIBITS SUPORTING**
26 **THE MOTION AND DECLARATION** on the following individuals by depositing true copies thereof in the
27 United States mail, enclosed in a sealed envelope, with postage paid, addressed as follows:

28 **DEBTORS**

29 Patrick Bernard Roberts, 34907 38th Ave. Ct. E., Eatonville, WA 98328

Chandelle Catherine Roberts, 34907 38th Ave. Ct. E., Eatonville, WA 98328

I declare under penalty of perjury under the laws of the United States of America that the foregoing
is true and correct.

/s/ Hue Banh

Hue Banh